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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE G. PATRI BASAVANA GOUD

WRIT PETITION NUMBER 2205 OF 1995

Between:

Sri Govinda Rao  
son of Sheshagiriyappa Patil 35)  
Major, agriculturist  
resident of Shakunavalli  
Soraba Taluk  
Shimoga District ...Petitioner

(By Sri R.Narayan, Advocate)

And:

1. The State of Karnataka  
Represented by its Secretry  
and Commissioner  
Revenue Department  
Vidhana Soudha  
Bangalore

2. The Land Tribunal, Sorab  
by its Secretary,  
Special Tahsildar  
Land Reforms, Sorab Taluk  
Shimoga District

3. Sri Murubasappa  
son of Basappa Narea  
since deceased by LR  
Sri Shivabasappa, Major  
agriculturist, resient of  
Shakunavalli, Sorab Taluk  
Shimoga District. ...Respondents

(By Smt.M.R.Shaanthakumari, HCGP  
for R1 and R2)

This writ petition having been  
converted from Civil Petition filed for  
consideration of the Appeal in No.LRA 377 of  
1986 on the file of the Land Reforms Appellate  
Authority, Shimoga, and the same coming on for  
hearing this day, the Court made the  
following:

ORDER

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The petitioner seeks quashing of the order of the 1st respondent-Land Tribunal, Sorab, in so far as the said order relates to conferment of occupancy rights in respect of Survey No.232 of Shakunavalli village measuring 3 acres 34 guntas in favour of 3rd respondent Marubasappa, since deceased, by his legal representative Shivabasappa.

2. Marubasappa filed an application before the 1st respondent-Land Tribunal claiming occupancy rights in respect of three lands, viz., Survey No.40 of Aratalagadde and Survey Nos.182 & 232 of Shakunavalli, the latter two lands being of the ownership of the present petitioner Govinda Rao. We are herein concerned only with Survey No.232. By the impugned order, the Land Tribunal has conferred occupancy rights in respect of the said Survey No.232 in favour of Shivabasappa.

3. At the out set, Sri.Bindu Kumar, learned counsel for the petitioner, urges that the person Shivabasappa in whose favour occupancy rights have been conferred by the Land Tribunal in respect of Survey No.232 is utter stranger to

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the proceeding before the Land Tribunal and that, therefore, the order needs to be quashed solely on this ground. To appreciate this contention, the factual position needs to be looked into. It is true, Form No.7 was submitted by Marubasappa S/o Basappa Narer of Shakunavalli village. When the Land Tribunal took up the matter for enquiry, as the order sheet maintained by the Land Tribunal would show that, on the very first date of hearing before the Land Tribunal, Shivabasappa appeared and his presence was taken as the presence of the applicant and his signature to the order sheet was also taken. It is now made out that Marubasappa the original applicant had since been dead. The contention of Sri.Bindu Kumar is that, firstly Shivabasappa is not admitted by the petitioner to be the legal representative of deceased applicant Marubasappa and secondly, even if Shivabasappa was the legal representative, there is no order by the Tribunal to the effect that, he had been brought on record as legal representative.

4. So far as the first ground is concerned, though in Paragraph 13 of the writ petition, the petitioner disputes the status of Shivabasappa as the LR of deceased Marubasappa,

the earlier averment in Paragraph 12 would  
make it clear that petitioner himself very  
much admitted that the applicant Marubasappa  
was dead and that Shivabasappa was his son.  
Paragraph 12 of the writ petition would read  
thus :

" 12. That Form No.7 filed by  
Marubasappa. But at the time of  
the enquiry Marubasappa was dead  
and his son Shivabasappa is not at  
all brought on record. "

Even otherwise, in course of his evidence  
before the Land Tribunal, petitioner himself  
referred to the said Shivabasappa as the  
applicant and he made this reference while  
stating that, he, that is, the petitioner, was  
the khatedar of Survey No.232 and that the said  
land had never been cultivated by the applicant  
Shivabasappa. The fact, thus, remains that  
the petitioner very much recognised Shivabasappa  
as the son of Marubasappa and, Marubasappa having  
since deceased, Shivabasappa was conducting the  
proceeding before the Land Tribunal as an  
applicant seeking conferment of occupancy  
rights in respect of Survey No.232.

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5. So far as the second contention of Sri.Bindu Kumar is concerned, viz., that even if Shivabasappa is the son of Marubasappa, there was no order of the Land Tribunal to the effect that he was brought on record as LR of Marubasappa, suffice it to say that, to the knowledge of the petitioner and as permitted by the Land Tribunal itself, Shivabasappa participated in the proceeding as an applicant seeking conferment of occupancy rights in respect of Survey No.232. Both the parties thus proceeded and the Land Tribunal recognised that ~~the~~ Shivabasappa was seeking conferment of occupancy rights in respect of Survey No.232 and that the present petitioner was opposed<sup>ing</sup> such claim. The question then is, due to the absence of a formal order by the Land Tribunal bringing Shivabasappa on record as LR of Marubasappa, the eventual order of conferment of occupancy rights impugned herein was a nullity. This has been answered by a Division Bench of this Court in MANJAPPA M.L. -vs- HONNAPPA, Writ Appeal No.1793/80 disposed of on 15.12.1980 (1982 (1) Kar.L.J. S.N. 15). This is what the Division Bench said in this regard:

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" When the parties appearing before the Tribunal are not assisted by counsel, it is neither proper nor salutary to import the technical rules of procedure of civil Courts. Hence, not bringing formally on record the LRs of a deceased party in a proceeding before the Tribunal cannot be held to nullify such proceeding on that account. What has to be seen is whether the LRs of the deceased party in the proceeding had a reasonable opportunity to contest the claim. "

6. The objection of Sri.Bindu Kumar, learned counsel for the petitioner in this regard, therefore, needs to be overruled and the matter needs to be gone into on merits.

7. Coming to the impugned order, it would show that the Land Tribunal has based its conclusion on the basis of the evidence, both oral and documentary. So far as oral evidence is concerned, as rightly indicated in the impugned order, there is the evidence of Shivabasappa, the LR of the applicant with regard to the personal cultivation of the land concerned viz., Survey No.232, whereas, on the other side, there is the evidence of the present petitioner supported by the evidence of one

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...7.

Basavarajappa to the effect that the land has been under the cultivation of the petitioner himself. In addition to this oral evidence, the impugned order also refers to the documentary evidence. The Tribunal particularly makes a mention of the entry of the original applicant Marubasappa's name in respect of land concerned in the pahani column for the year 1964-65 and then refers to the fact that, from 1965-70, the pahani column is blank, that for the year 1970-71, petitioner's name is mentioned therein and that for the year 1971-73, the column is blank. If this documentary evidence had been there before the Land Tribunal, it could have been said that the Tribunal has based its conclusion with regard to conferment of occupancy rights in favour of Shivabasappa on oral and documentary evidence placed on record. But, it so happened that the said documentary evidence, <sup>showing</sup> ~~starting~~ from the year 1964-65 ending with 1972-73 in the pahani column, the names of Marubasappa and petitioner, ~~are~~ stated to have been shown as referred to above, had not been there at all before the Land Tribunal. In the entire case records called for from the Land Tribunal, it could be seen that, there is

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no such documentary evidence at all. It is not as though it is missing by mistake. Its absence was noticed even at the time the matter was pending before the Land Reforms Appellate Authority and the present petitioner, therefore, filed an application therein seeking permission to adduce evidence in that regard. This would only show that the said documentary evidence never had been there before the Land Tribunal, and all that was there with regard to Survey No.232 was the oral evidence as referred to earlier. The Land Tribunal were to base its conclusion on the basis of the said oral evidence, it <sup>sh</sup>ould have been a different matter. But, the above discussion would show that the Land Tribunal based its conclusion on non-existent material. The impugned order, therefore, cannot be legally <sup>ed.</sup> sustainable.

8. Writ petition is allowed. Impugned order is quashed. The matter is remitted to the Land Tribunal for consideration of the claim of Shivabasappa for conferment of occupancy rights in respect of Survey No.232



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afresh after issuing notice to the present  
petitioner as well as to the said Shivabasappa  
and after affording opportunity to both the  
sides to lead such evidence as they may  
choose.



Sd/-  
JUDGE

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